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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91200643
Party	Defendant Nowlan Family Trust
Correspondence Address	JOHN J OMALLEY VOLPE AND KOENIG PC 30 S 17TH STREET, UNITED PLAZA PHILADELPHIA, PA 19103 UNITED STATES Jomalley@vklaw.com, ktinker@vklaw.com, trademarks@vklaw.com
Submission	Reply in Support of Motion
Filer's Name	John J. O'Malley
Filer's e-mail	jomalley@vklaw.com, ktinker@vklaw.com, trademarks@vklaw.com
Signature	/John J. O'Malley/
Date	06/17/2014
Attachments	PFN Reply.pdf(73205 bytes)

TRADEMARK

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Trademark Opposition of:

Mark: BUCK ROGERS
Serial No.: 77/650,082
Filed: January 15, 2009

Opposition No. 91200643

Dille Family Trust,
Opposer

v.

Nowlan Family Trust,
Applicant

**Applicant's Reply in Support of Its Motion to Strike
Portions of Opposer's Notice of Reliance**

Opposer, Nowlan Family Trust, hereby submits this Reply in support of its Motion to Strike Opposer's Notice of Reliance.

I. Argument.

A. The Board Need Not Defer Ruling on the Objections

Although Applicant concedes that it is the policy of the Board not to read trial testimony or examine other trial evidence prior to final decision. However, the purpose of a motion to strike a Notice of Reliance is to exclude documents which are on their face not properly the subject of a Notice of Reliance. Applicant submits that the Board need not review the documents at issue in detail, but can rule on the

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Certificate of Mailing and Service

I hereby certify that this correspondence is filed online via ESTTA to: Trademark Trial and Appeal Board on June 17, 2014.

June 17, 2014
Date of Signature
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s/John J. O'Malley
John J. O'Malley

objections simply by reviewing the face of the documents and the Notice of Reliance. *Boyd's Collection Ltd. v. Herrington & Co.*, 65 USPQ2d 2017, 2019-20 (TTAB 2003) (whether plaintiff's price sheets and catalogs constitute proper subject matter for a notice of reliance is not a substantive issue and may be determined from the face of the notice of reliance).

B. Notice of Reliance Nos. 5 -12 Are Not Properly Admitted Through a Notice of Reliance.

Opposer submits that Notice of Reliance Nos. 5 – 12 are admissible through a Notice of Reliance because the documents were produced for inspection by a party in response to an interrogatory. However, this argument misreads Trademark Rule 37 C.F.R. § 2.120(j). An answer to an interrogatory may be submitted and made part of the record only by the receiving or inquiring party. See 37 CFR § 2.120(j)(5); *Calypso Tech., Inc. v. Calypso Capital Mgmt., LP*, 2011 TTAB LEXIS 259 (Trademark Trial & App. Bd. Aug. 29, 2011). Although there is an exception if the inquiring party relies on less than all the interrogatory responses, that exception does not apply here because Applicant has not relied upon any of Opposer's responses to its discovery in this case. *Id.*

Even if the exception relied upon by Opposer applied, Opposer's Notice of reliance was still deficient because the Notice of Reliance itself did not include a copy of the interrogatory and the answer thereto, with any exhibit made part of the answer, with its Notice of Reliance. See 37 CFR § 2.120(j)(3).

C. There is No Prejudice to Opposer

Opposer has objected to Applicant's Motion to Strike as being untimely. Applicant noted that Opposer provided no support for that position. Moreover, there is no prejudice to Opposer by the Board considering the Motion. The case is suspended per the Board's Order of June 17, 2014. Moreover, Opposer in its response has sought twenty (20) days in which to correct the Notice of Reliance. Although Opposer believes twenty (20) days is too long, it does not object to Opposer being given a reasonable period of time to submit a corrected Notice of Reliance for curable defects in the Notice of Reliance.

In view of the above there is no prejudice to Opposer in the Board considering Applicant's Motion to Strike,

II. Conclusion

For the reasons set forth in Applicant's Motion to Strike Opposer's Notice of Reliance and those set forth herein, Applicant respectfully request that the Motion to Strike be granted.

Respectfully submitted,

NOWLAN FAMILY TRUST

Date: June 17, 2014

By s/John J. O'Malley
John J. O'Malley
Volpe and Koenig, P.C.
United Plaza
30 South 17th Street
Philadelphia, PA 19103
(215) 568-6400
Attorney for Applicant

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Trademark Opposition of:

Mark: BUCK ROGERS
Serial No.: 77/650,082
Filed: July 12, 2011

Opposition No. 91200643

Dille Family Trust,
Opposer

v.

Nowlan Family Trust,
Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Applicant's Reply in Support of Its Motion to Strike Portions of Opposer's Notice of Reliance was served on Applicant's Attorney of Record by electronic and first-class mail, postage pre-paid, to the following:

Vincent G. LoTempio, Esq.
Kloss, Stenger & LoTempio
69 Delaware Avenue, Suite 1002
Buffalo, NY 14202
vglotempio@klosslaw.com

Date: June 17, 2014

By: s/John J. O'Malley
John J. O'Malley, Esquire